

Docket: 2013-4579(IT)APP

BETWEEN:

CHARLES HAMER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on July 3, 2014 at Toronto, Ontario

Before: The Honourable Justice Woods

Appearances:

For the Applicant: The Applicant himself
Counsel for the Respondent: Rita Araujo

ORDER

Upon application for an order to extend time to serve a notice of objection to an assessment for the 2008 taxation year, the application is granted, and the notice of objection filed with the Canada Revenue Agency on October 29, 2013 is deemed to be a valid notice of objection served on the date of this Order. The parties shall bear their own costs.

Signed at Toronto, Ontario this 8th day of July 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 218
Date: 20140708
Docket: 2013-4579(IT)APP

BETWEEN:

CHARLES HAMER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Woods J.

[1] Charles Hamer has applied to this Court for an extension of time to serve a notice of objection to a reassessment made under the *Income Tax Act* for the 2008 taxation year. In the reassessment, the Canada Revenue Agency (CRA) disallowed a claim for charitable donations in the amount of \$18,750.

[2] Mr. Hamer submits that an extension should be allowed because he never received the notice of reassessment. He testified on cross-examination that he lives in a rural area and has had many problems with the delivery of mail.

[3] This is the second time that this application has come before me. At the first hearing, I informed Mr. Hamer that the application could not be granted on the basis that he did not receive the notice of reassessment. However, I indicated that it was proper for him to require that the Crown prove that the notice of reassessment was mailed. If the Crown failed in this proof, his application could be granted. The application was adjourned to give the Crown the opportunity to prepare on this issue.

[4] At the second hearing, the Crown introduced evidence of mailing in the form of an affidavit of Hamza Momoh, who is the litigation officer on this file. Mr. Momoh was not able to attend because he works in a different city.

Analysis

[5] The question to be decided is whether the notice of reassessment was mailed to Mr. Hamer by the date stated in the notice.

[6] If Mr. Hamer did not receive the notice due to a problem with Canada Post, this does not enable an extension to be granted beyond the deadline set out in the legislation. The time starts to run once the notice of reassessment is put in the mail by the CRA.

[7] The legislation certainly can be harsh in that the time for objecting runs even if the notice of reassessment is not received due to the fault of a third party such as Canada Post. However, the legislation is clear and the Court is confined to the scheme that Parliament has put in place.

[8] The Crown states the issue as to whether it is more likely than not that the notice was mailed. The Crown suggests that it has established this based on the affidavit of Mr. Momoh and the testimony of Mr. Hamer that he has had difficulty with the delivery of his mail. It is more likely that the problem is with Canada Post, the Crown suggests.

[9] I agree with the Crown that the question is whether it is more likely than not that the notice of reassessment was mailed. I also agree that it is relevant to consider that Mr. Hamer had other problems with mail delivery.

[10] The problem that I have with the Crown's position is that I am not satisfied of the reliability of the affidavit by Mr. Momoh. Unless there is reliable evidence that the notice of reassessment has been mailed, Mr. Hamer is entitled to succeed. The evidence does not need to be perfect, but the Court should have a reasonable basis to consider that the evidence is reliable.

[11] The relevant parts of Mr. Momoh's affidavit are reproduced below.

8. I am informed by Debra Desmarais, Programs Officer of the Initial Returns Processing Section, Processing Division, Individual Returns Directorate of the Agency, and do verily believe that in processing a request to prepare and mail a Notice of Reassessment:

- a. income tax reassessments are processed electronically in the Agency's computer system and the information is released electronically to the Media Services Print Shop of the Electronic

and Print Media Directorate in a Daily Assessing Schedule (“DAS”) for printing of the Notices of Reassessment and that the date of the notice is post-dated to the date of mailing, and

- b. the applicant’s Notice of Reassessment for the 2008 taxation year was released in DAS 75 of the 2009 Program with the notice post-dated to March 12, 2012.

9. I am informed by Christopher Hummel, Acting Team Leader of Print to Mail at the Winnipeg Taxation Centre of the Agency, and do verily believe that:

- a. the information released by the Initial Returns Processing Section in DAS is downloaded for printing and the Notices of Reassessment are printed with the date of the notice, post-dated to the date of mailing;
- b. the printed Notices of Reassessment are inserted by the inserters into individual envelopes one to four days prior to the date of mailing;
- c. inserters are the mechanical equipment that insert the notices into the envelopes;
- d. the inserters maintain a tally sheet of the total number of printed notices for mailing;
- e. all envelopes are placed in bins for pickup by Canada Post for mailing on the date of the notice;
- f. before the Notices of Reassessment are placed in the bin for pickup by Canada Post, the computerized count from the inserters is matched with the expected count from the tally sheets produced by the DAS cycle and if both counts are not the same the print job is cancelled, the printed Notices destroyed, and the print job is redone; and
- g. the counts were accurate for the two aforementioned DAS (as referred to in subparagraph 8(b) above) and the notices were mailed on-time.

10. Based on the information provided to me, as contained in paragraphs 9 and 10 above, and upon review of the Agency’s records, I do verily believe that the Notice of Reassessment dated March 15, 2012 for the 2008 taxation year, was

mailed on March 12, 2012 to the applicant's address of record with the Agency, namely, RR1, 9142 STATION STREET ONTARIO, NOB 1Z0, Canada.

[12] I make the following observations about the affidavit.

[13] First, the key facts in the affidavit are not within the knowledge of Mr. Momoh. He relies instead on information provided to him by Debra Desmarais and Christopher Hummel. What is the point of having a sworn affidavit if the people with the information are not required to swear the accuracy of their statements?

[14] Second, the affidavit provides only a bare-bones description of the mailing of this particular notice of reassessment. The affidavit is lacking in detail in important respects. For example, Mr. Momoh states the conclusion of Ms. Desmarais that the notice of reassessment was released in DAS 75 but there is no detail as to how this conclusion was reached. There is a similar problem with the conclusion of Mr. Hummel that the counts were accurate. In addition, the conclusion reached by Mr. Momoh in paragraph 10 provides no detail at all except that it is "upon review of the Agency's records." These brief conclusions do not provide me with confidence that the statements are accurate.

[15] This lack of detail may be contrasted with the thorough evidence provided in *Abraham v The Queen*, 2004 TCC 380. I am not suggesting that the level of detail provided in *Abraham* is necessary in each case. However, the evidence must be better than is provided in Mr. Momoh's affidavit.

[16] Third, Mr. Momoh's affidavit may be based on a standard form. I note in particular that it is very similar to an affidavit filed in this Court in *Nicholls v The Queen*, 2011 TCC 39.

[17] Simply put, I do not have adequate reasons to have confidence as to the diligence that Mr. Momoh, Ms. Desmarais or Mr. Hummel took to this matter.

[18] Fourth, I note that none of the CRA officials were available for cross-examination. I would not find this to be fatal if I were otherwise satisfied as to the reliability of the affidavit, but I do have concerns in this case.

[19] For these reasons, I conclude that the Crown has not provided sufficient reliable evidence that the 2008 notice of reassessment was mailed to Mr. Hamer. Without this evidence, it is not sufficient for the Crown to point to problems that Mr. Hamer was having with Canada Post.

[20] The application will be granted.

Signed at Toronto, Ontario this 8th day of July 2014.

“J.M. Woods”

Woods J.

CITATION: 2014 TCC 218

COURT FILE NO.: 2013-4579(IT)APP

STYLE OF CAUSE: CHARLES HAMER and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 3, 2014

REASONS FOR ORDER BY: The Honourable Justice Woods

DATE OF ORDER: July 8, 2014

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Rita Araujo

COUNSEL OF RECORD:

For the Applicant:

Name: n/a

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada